



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2004-5172

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203970.

The Lubbock Police Department (the "department") received a request for any and all reports and records concerning an injury to a child that occurred at the Wee Care Fun Center day care center (the "center"). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted information relates to a report of alleged or suspected child abuse. We note, however, that section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See* Fam. Code § 261.201(h). Pursuant to section 552.303(c) of the Government Code, on June 9, 2004 this office sent a notice to the department via facsimile requesting that it provide further information regarding the applicability of Chapter 42 of the Human Resources Code to the center. The department submitted its response on June 10, 2004 in which the department informs us that the center is regulated under Chapter 42 of the Human Resources Code. Accordingly, because section 261.201 does not apply to the investigation in question, none of the submitted information may be withheld under section 552.101 in conjunction with section 261.201.

You also argue that the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information relates to an investigation that has been concluded but which did not result in a conviction or deferred adjudication. Based upon this representation and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, which must be released to this requestor, you may withhold the submitted information under section 552.108.¹ We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law.

¹We note that a portion of the basic information is confidential with respect to the general public. However, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information). If you receive a request for this information from someone other than this requestor or her client, you should again seek our decision.

Gov't Code § 552.007. Because our ruling is dispositive, we need not address your remaining argument.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 203970

Enc. Submitted documents

c: Ms. Ginger Slocum
1115 Broadway
P. O. Box 10324
Lubbock, Texas 79401
(w/o enclosures)